

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.478 OF 1988

Crompton Greaves Ltd. ...Petitioners

Versus

Kamdar Cements Ltd. ...Respondents

ALONG WITH

COMPANY PETITION NO.419 OF 1987

Sayajee Iron & Engineering

Co.Pvt.Ltd. ...Petitioners

Versus

Kamdar Cements Ltd. ...Respondents

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None for Petitioners.

Mr.M.U.Pandey for Respondent Company.

Ms.Sheetal Avhad i/b M/s.Gagrat & Co. for
secured creditors i.e. Central Bank of India.

Mrs.K.V.Gautam, Dy.Official Liquidator is present.

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CORAM: A.M.KHANWILKAR, J.

JULY 7, 2005.

P.C.

1. Both these Petitions are filed under Sections 433 and 434 of the Companies Act, 1956, praying for winding up of Kamdar Cements Ltd., a Company registered under the provisions of Companies Act, 1956.

2. In Company Petition No.478 of 1988, the claim is of outstanding claim regarding electric motor sold and delivered to the Respondent Company in the sum of Rs.18,72,205.19 (Rupees Eighteen Lakhs Seventy-two Thousand Two Hundred Five & Paise Nineteen Only). From the pleadings filed in the said Petition, it is obvious that the Respondent Company has acknowledged its liability. In spite of statutory notice, the Company neither gave reply to the Petitioner nor remitted the amount as demanded. The legal presumption against the Respondent Company that the Company is unable to pay its debts, remains unrebutted.

3. Be that as it may, it is seen that the Company was referred to B.I.F.R. and eventually the B.I.F.R. has opined that there is failure of the rehabilitation efforts in respect of the

Company. The accumulated losses of the Company as at end of March 1989 amounted to Rs.760/- lakhs, completely eroding the Company's share capital and reserves of Rs.303 lakhs. The Board has noted that there is enormous debt burden on the Company and Company has closed its plant since March 1988.

4. The Board has also recorded the inability of the promoters to bring in substantial long-term interest free funds and their failure to indicate any concrete proposal from any resourceful party to bring in such funds for the rehabilitation of the Company. Even the Banks and Financial Institutions concerned and the management of the Company have conceded that the revival of the Company is not possible under the given circumstances and the Company ought to be wound up. The position has not changed a bit since then, when the opinion of the Board has been recorded after the proceedings held on 5th April 1990.

5. In this backdrop, as the huge claim against the Company is outstanding and the accumulated losses have completely eroded the

company's share capital and reserves, the only option for this Court is to order winding up of the Respondent Company as Respondent Company is unable to pay its debts.

6. In the circumstances, Petitions are made absolute in terms of prayer clause (a) with direction to the Official Liquidator who has been appointed as Provisional Liquidator to forthwith take over possession of the assets and properties of the Company and proceed in accordance with law.

7. I am informed by the representative of the Official Liquidator that possession of assets and properties of the Company could not be taken over, as Court Receiver, High Court, Mumbai has been appointed in proceedings taken out by Central Bank of India (Suit No.2609 of 1990 which was filed in the High Court, now stands transferred to Debts Recovery Tribunal).

8. Counsel appearing for the Central Bank of India states that it will have no objection if the Official Liquidator takes over the assets and

properties of the Company directly from the Court Receiver, High Court, Mumbai.

9. In the circumstances, the Court Receiver, High Court, Mumbai is directed to hand over assets and properties of the Respondent Company to the Official Liquidator forthwith, to enable the Official Liquidator to take further steps in the matter in accordance with law.

10. Secured creditors shall bear the security charges, if any. Ordered accordingly.

11. In view of this order report of the Official Liquidator dated 23rd June 2005 is also disposed of.

A.M.KHANWILKAR, J.